ROBERT J. COLLINS ET AL.

IBLA 91-309 Decided May 31, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring association placer mining claims null and void in part and holding mineral patent application for rejection subject to curative action. CACA 130467 and CACA 175708.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Placer Claims--Rights-of-Way: Federal Highway Act

   Those portions of placer mining claims located on lands subject to a right-of-way grant issued pursuant to sec. 317 of the Federal Aid Highway Act, 23 U.S.C. § 317 (1988), are properly declared null and void ab initio.

2. Mining Claims: Lands Subject to--Mining Claims: Placer Claims

   Association placer mining claim locations made pursuant to 30 U.S.C. § 36 (1988) may not contain noncontiguous tracts of land within a single location.

APPEARANCES: Jesse R. Collins and Robert J. Collins, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert J. Collins and Jesse R. Collins have appealed from an April 26, 1991, decision of the California State Office, Bureau of Land Management (BLM) declaring association placer mining claims "Pink Lady" (CAMC 130467) and "Pink Lady #1" (CAMC 175708) null and void in part as to lands embraced within outstanding highway rights-of-way. The decision also found that the rights-of-way divided the Pink Lady claim into noncontiguous parcels which are not allowed to be combined in a single association placer claim. Accordingly, the decision advised that noncontiguous tracts could be excluded in an amended notice of location and that excluded tracts could be the subject of new locations, subject to the requirements of a discovery on each claim. Finally, the decision held the mineral patent application

for rejection pending completion of a mineral survey of the lands included in the claims. 1/

Notices of location for the CAMC 130467 "Pink Lady," located July 1, 1983, and CAMC 175708 "Pink Lady #1," located March 1, 1986, were filed for recordation with BLM on August 12, 1983, and March 7, 1986, respectively, under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1988) and regulations at 43 CFR Subpart 3833. The Pink Lady placer claim 2/ embraces the SW¼ of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian (SBM). The Pink Lady #1 claim 3/ embraces lands situated in the NW¼ SE¼ and the S½ SW¼ NE¼ of sec. 4, T. 8 N., R. 2 W., SBM. 4/ On June 28, 1990, Robert J. Collins and Jesse R. Collins filed applications for mineral patent to the Pink Lady and Pink Lady #1 claims.

BLM declared the two claims null and void in part to the extent portions of the Pink Lady and Pink Lady #1 placer mining claims fell within three Federal aid highway right-of-way grants. BLM found that:

> [T]he official records of this office show that the three Federal Aid Highway rights-of-way serialized as LA 0143954, LA 0166500 and LA 0166500A, pass through the above described land. The right-of-way serialized as LA 0143954 was granted under the authority of the Federal Highway Act of November 9, 1921 (42 Stat. 212). [5/] The rights-of-way serialized as LA 0166500 and LA 0166500A were granted under the authority of the Transportation Act of August 27, 1958 (72 Stat. 893). [6/]

1/ In this regard, we note that the serial number "CACA 26798" appears in the caption of the BLM decision. However, the decision makes no explicit reference to "CACA 26798" and no case file bearing this number was forwarded to the Board. This number apparently identifies the mineral patent application which was not finally adjudicated by the BLM decision. In the absence of a final BLM decision on the merits, a matter is not ordinarily ripe for review by this Board. See Bennie Sinerius, 115 IBLA 312 (1990). Hence, we find that adjudication of the patent application is not properly before us in this appeal.

2/ The locators of the Pink Lady claim include J. R. Collins, Robert J. Collins, Deborah J. Collins, Mildred E. Collins, Clifford E. Arnhart, Shirley A. Arnhart, Linda J. Collins Wood and Karen M. Case.

3/ The locators of the Pink Lady #1 claim were J. R. Collins, Mildred E. Collins and Robert J. Collins.

4/ The location notice filed for recordation with BLM described the lands embraced in the Pink Lady #1 claim as "NW¼, SE¼ and S½, SW¼, NE¼ (60 acres)." While the punctuation in this description causes it to be erroneous, embracing far more than 60 acres, BLM apparently found that the claimants intended to describe the NW¼ SE¼ and the S½ SW¼ NE¼ embracing 60 acres.

5/ Currently codified at 23 U.S.C. § 317 (1988).

6/ Currently codified at 23 U.S.C. § 317 (1988).

> The lands within these rights-of-way have been appropriated and transferred to the State of California; LA 0143954 was granted on March 29, 1957, LA 0166500 was granted on July 27, 1960, and LA 0166500A was granted on March 30, 1971. Therefore, these lands were not open to mineral location entry at the time of location.

(BLM Decision at 1). Having found that the lands within the right-of-way grants were closed to mineral entry at the time the claims were located, BLM determined that the claims were null and void ab initio as to those lands within the right-of-way grants. Id. at 2. Further, noting that location of association placer claims is limited to contiguous claims, 30 U.S.C. § 36 (1988), and finding that the right-of-way grants divide the Pink Lady claim into noncontiguous tracts, the decision advised that noncontiguous tracts could be excluded in an amended notice of location and that excluded tracts could be the subject of new locations, subject to the requirements of a discovery on each claim. Id.

Appellants do not dispute that the lands within the highway right-of-way grants should be excluded from any patent, but they dispute that the right-of-way grants have the effect of dividing the Pink Lady claim into noncontiguous parcels rendering portions of the claim null and void. Appellants also assert title to minerals under the right-of-way, citing R.S. 2477. 7/ They contend their claims are valid even though they are subject to the existing right-of-way grants.

[1] The right-of-way grants which preceded appellants' mining claims at issue in this case were made pursuant to statute which provided that when it is determined that "any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway," a map shall be filed showing the lands which it is "desired to appropriate." 23 U.S.C. § 317(a) (1988). If the Secretary of the Department supervising administration of such lands does not certify that appropriation to such use is contrary to the public interest, "then such land and materials may be appropriated and transferred to the State highway Department." 23 U.S.C. § 317(b) (1988). With respect to mining claims located subsequent to right-of-way grants issued under this statutory authority for material sites, the Department has long held that such claims are properly declared null and void ab initio to the extent the claim embraces lands within the right-of-way. Russell Avery, 99 IBLA 22 (1987); Ralph Memmott, 61 IBLA 116 (1982); James F. Pepcorn, 50 IBLA 414 (1980); Sam D. Rawson, 61 I.D. 255 (1953). In William Peterson, 113 IBLA 19, 20 (1990), the Board held that this rule also applies to lands appropriated

7/ Act of July 26, 1866, ch. 262, § 8, 14 Stat. 253 (formerly codified at 43 U.S.C. § 932 (1988)), repealed by FLPMA, P.L. 94-579, § 706(a), 90 Stat. 2793 (1976). This statute provided that: "The right of way for the construction of highways over the public lands, not reserved for public uses, is granted."

and transferred for use as a highway right-of-way under the same statutory authority. The Peterson case is controlling on the facts of this case. See Jesse R. Collins, 127 IBLA 122 (1993). 8/

[2] The decision appealed from also held that lands embraced within an association placer claim must be contiguous. The statutory authority for association placer mining claims provides:

> Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof, but no location of a placer claim, made after the 9th day of July, 1870, shall exceed one hundred and sixty acres for any person or association of persons, which locations shall conform to the United States surveys. [Emphasis added.]

30 U.S.C. § 36 (1988). This statute has been held to authorize an association location of contiguous claims only based on a finding that the statute contemplates the location of an association placer claim of up to 160 acres consisting of 8 contiguous placer claims of not more than 20 acres each. Stenfjeld v. Espe, 171 F. 825, 827 (9th Cir. 1909); see William Peterson, supra at 20; W. G. Singleton, 75 IBLA 168, 170 (1983). Separate tracts which are not contiguous are not subject to a single location and, hence, appellants must elect which tracts they wish to preserve under their original claim. See Jesse R. Collins, supra; W. G. Singleton, supra at 170.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Burski
Administrative Judge

8/ We need not address the implications of a R.S. 2477 right-of-way in this case since the land was clearly appropriated for highway rights-of-way under the provisions of 23 U.S.C. § 317 (1988).